



Bill 187 – The Agricultural Employees Protection Act

A Special Report

by

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The Agricultural Employees Protection Act (Bill 187) was recently introduced in the Ontario Provincial Legislature. This legislation is the Ontario government's response to the decision of the Supreme Court taken in response to an action launched by the United Food and Commercial Workers' Union (UFCW).

At its core, Bill 187 provides agricultural workers the right to associate and act collectively in pursuing and representing their interests with employers, but prevents them from forming unions. It also maintains the "special" treatment that agricultural workers and employers receive by excluding them from the Labour Relations Act (LRA).

This article reviews the history leading to the introduction of Bill 187, and discusses some of the implications that the proposed Act may have for the agricultural workplace. While the focus here is on Ontario, since this is where the legislation is being introduced, there may be implications for agri-food workplaces in other provinces.

History

Agricultural workers in Ontario were excluded from the LRA until 1994 when the NDP government in Ontario passed the Agricultural Labour Relations Act (ALRA). The ALRA gave agricultural employees the right to unionize, and provided for settlement of disputes through mediation and binding arbitration, but forbade strikes.

In 1995, the Progressive Conservative government repealed the ALRA, and re-instituted the agricultural exemptions in the LRA. Subsequently, the UFCW initiated a legal challenge against the government to fight for the same rights for agricultural workers as those enjoyed by all other workers under the LRA. The UFCW challenge culminated in 2001 with a Supreme Court of Canada decision directing the provincial government to provide agricultural workers the right to associate.

Accordingly, on Oct. 7th, 2002, the Hon. Helen Johns, Ontario Minister of Agriculture and Food, introduced Bill 187, the Agricultural Employees Protection Act, 2002 in the Provincial Legislature. This Bill is now in the consultation stage, and is expected to be passed before yearend. The Supreme Court ruling requires the government to have the necessary provisions in place by June 2003, or provide agricultural workers the same rights as most other workers under the LRA.

Bill 187, the *Agricultural Employee Protection Act*

All workers in Ontario are provided certain basic rights under the Employment Standards Act, the Human Rights Code, and the Workplace Safety and Insurance Act. Nothing in either Bill 187 or the LRA reduces the obligations of agricultural employers to provide the basic employee rights outlined in these Acts.

The Labour Relations Act defines agriculture as follows:

"agriculture" includes farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, furbearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms and tobacco, and any practices performed as an integral part of an agricultural operation, (Labour Relations Act, 1995, Section 1 (1).)

Section 3 (b) of the LRA explicitly states that the Act does not apply "to a person employed in agriculture, hunting or trapping".

Bill 187 sustains the agricultural exemptions currently provided in the LRA, but also provides agricultural workers certain rights not previously enjoyed. The Bill provides:

- Agricultural workers the right to form employee associations;
- Agricultural workers the right to have third parties represent their interests to employers;
- Agricultural workers the right to protection from interference, coercion and discrimination based on association activities;
- Guidelines for labour organizers in gaining access to employees in agricultural workplaces; and
- Dispute resolution procedures between employee associations and employers through hearings before the existing Agricultural and Food Appeal Tribunal.

Clearly distinguishing Bill 187 from the LRA is the absence of mediation, binding arbitration, hearings before the Labour Board, voting and certification procedures, and the right to strike.

Implications for Agri-food employers

Standing back from Bill 187, and the inevitable surround sound of legal and political noise, it is useful to reflect why employees would seek to "associate", and why unions would be interested in organizing employees.

At their core, unions and employee associations are formed when employees perceive that they are being unfairly treated in the employment relationship. In short, there is a failure of some sort in the workplace, and employees feel disadvantaged in securing just and proper treatment from employers.

Unions are also businesses. They have hierarchical organizational structures, command and control procedures, revenue targets, costs, and demands for profit to advance the union mission. Union revenue is derived from dues paid by employees for services provided to them by the union.

In the employment relationship, there are certain key elements which an employer really should (must) respect, whether they have a union or not. Among these are:

- fair compensation and benefits for services provided;
- provision of a safe, healthy and positive workplace;
- fair workplace rules for hours of work, rest breaks, and overtime assignment;
- clear job qualification standards and job posting procedures;
- appropriate recognition of seniority;
- an established, timely and fair process for handling grievances; and
- fair vacation and holiday benefits.

An employer who violates these basic elements in the employment relationship can cause the employees to band together, through the help of a union, to force the employer to do what is, quite often, simply right.

Unions may have agendas that seem rather divorced from the success of the employer's business. They invariably have difficulty recognizing, or allowing the recognition of, merit, individuality, innovation, and productivity - all elements of business that help distinguish winners. Nevertheless, they are businesses with distinct mandates, visions and missions. They have organizations to sustain, and overheads to pay, and they compete with one another for customers, i.e. dues paying employees. Moreover, they have the challenge of sustaining the competitiveness of the employer while ensuring the maximum return for their members. If they are too successful in obtaining returns for their members, the company may be forced to make decisions that result in the loss of the union members' jobs, such as closing the business, moving to another location, or selling to a larger company.

There will be some logistical challenges in organizing agricultural workers into employee associations. There are relatively few individual agricultural enterprises with sufficient potential dues paying members to be financially attractive to unions. Accordingly, they may need to find ways to organize and represent workers across businesses, such as currently exist in the construction trades industry. Is this an opportunity for business, or for unions?

There has been much ink spilled examining the increasing size, and the declining numbers, of farm businesses, and the shortages of skilled, semi-skilled and unskilled labour for agricultural work. Farms are getting bigger, and farm owners / manager need to hire more people, often with increasing general and specific skill levels, to get the job done. As employers, running small and medium sized businesses, is there some "special" condition that legitimately sustains an exemption from the LRA? Other sectors, such as nursing, policing or prison guards, seem to be able to operate with unions and maintain essential services in times of dispute.

There is an interesting contradiction apparent in the farm employer community. There are many who support mandatory participation, regulated marketing schemes, such as the Canadian Wheat Board, but oppose similar rights for their suppliers, farm workers. History shows us time and again that most any compulsory, total participation system eventually breaks down as the free will of spirited individuals rises up against the tyranny of the monopoly, or the dinosaur collapses under the weight of its own success. While farm organizations fight to retain "special" exemptions, they may be illuminating a contradiction of principles.

From an agricultural employer perspective, Bill 187 will change the way they do business, although not so much as if agricultural workers were provided the same rights as most other workers under the LRA. The Bill will ensure that those farm workers who are not treated in a fair and prudent manner have ways to remedy this unacceptable treatment. There are few, if any, legitimate justifications for unfair treatment of employees (I can't think of any, but maybe someone can.).

Bill 187 will also increase the costs of doing business. For instance, when a third party is retained to represent a group of employees, additional costs will be incurred. When this party exercises its right to seek a Tribunal decision on complaints and contraventions, further costs will be incurred. Employers should expect that they will have additional time, management and legal expenses in dealing with associations.

As important as what is in the Bill, is what the Bill does not address.

1. What are the rules governing formation of an association? Will recruiting, card signing, voting and certification procedures currently established in the LRA for unions be replicated in some form for agricultural employee associations?

2. Will the Tribunal be able to appropriately address complaints on a timely basis? There is a sizable body of labour relations and employment law and legal precedent. There are many people who work in the labour relations field. Will they be retained to utilize their skills and experience in presenting cases to the Tribunal?
3. How will the Tribunal, well skilled and accustomed to addressing matters of regulated marketing and agricultural practice law, deal with the potential onslaught of labour lawyers representing both sides in issues of dispute? To meet this new responsibility, the Tribunal is required to expand its roster of members to include individuals capable of hearing and assessing employment related complaints. Where will they come from, and how will they be compensated?

As Bill 187 is debated and progresses through the process to Royal Assent, it seems clear that:

- agricultural employers must be proactive, and ensure that their current practices are fair and reasonable;
- the role of the Tribunal is being fundamentally changed;
- agricultural employer / employee issues will soon involve third party intervention in ways not previously experienced; and
- costs will increase.

It also seems clear that the legal arguments are not over. They may be fought in the courts as the unions fight to have Bill 187 changed or strengthened to look more like the LRA, or the arguments may, in due course, move to the Tribunal.

For employers, it all comes down to common sense, fair and honourable treatment of all employees, and the provision of a safe and rewarding workplace. This is increasingly important for farm businesses, as farm work becomes more sophisticated, and farm labour with the necessary skills becomes increasingly difficult to find and retain.

The political posturing and legal arguments will continue. The real message for employers is “do the right things, simply because they are the right things”, and Bill 187, or other applications of labour laws and regulations to agricultural businesses, will not unduly impact the competitiveness of your business.

Ignore the noise, and run your business like your employees really mattered to you, and your competitiveness may well be enhanced!